

and all labeling be submitted. Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(ii) [Reserved]

(2) *Review copy.* The applicant must submit a review copy of the application. Each of the technical sections, described in paragraphs (d)(1) through (d)(6) of this section, in the review copy is required to be separately bound with a copy of the application form required under paragraph (a) of this section and a copy of the summary required under paragraph (c) of this section.

(3) *Field copy.* The applicant must submit a field copy of the application that contains the technical section described in paragraph (d)(1) of this section, a copy of the application form required under paragraph (a) of this section, a copy of the summary required under paragraph (c) of this section, and a certification that the field copy is a true copy of the technical section described in paragraph (d)(1) of this section contained in the archival and review copies of the application.

(4) *Binding folders.* The applicant may obtain from FDA sufficient folders to bind the archival, the review, and the field copies of the application.

(5) *Electronic format submissions.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

[50 FR 7493, Feb. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 314.50, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 314.52 Notice of certification of invalidity or noninfringement of a patent.**

(a) *Notice of certification.* For each patent which claims the drug or drugs on which investigations that are relied upon by the applicant for approval of its application were conducted or which claims a use for such drug or

drugs and which the applicant certifies under § 314.50(i)(1)(i)(A)(4) that a patent is invalid, unenforceable, or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent that is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for each drug product which is claimed by the patent or a use of which is claimed by the patent and for which the applicant is seeking approval, or, if the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Orange Book Staff, Office of Generic Drugs, 7500 Standish Pl., Rockville, MD 20855.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) *Sending the notice.* The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its application has been filed. At the same time, the applicant shall amend its application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirement under paragraph (c) of this section.

(c) *Content of a notice.* In the notice, the applicant shall cite section 505(b)(3)(B) of the act and shall include, but not be limited to, the following information:

(1) A statement that a 505(b)(2) application submitted by the applicant has been filed by FDA.

(2) The application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid, unenforceable, or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid, unenforceable, or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, a full and detailed explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to an application.* If an application is amended to include the certification described in § 314.50(i), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) *Approval.* If the requirements of this section are met, the agency will presume the notice to be complete and

sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder as the first day of the 45-day period provided for in section 505(c)(3)(C) of the act. FDA may, if the applicant amends its application with a written statement that a later date should be used, count from such later date.

[59 FR 50362, Oct. 3, 1994, as amended at 68 FR 36703, June 18, 2003; 69 FR 11310, Mar. 10, 2004; 74 FR 9766, Mar. 6, 2009; 74 FR 36605, July 24, 2009]

#### § 314.53 Submission of patent information.

(a) *Who must submit patent information.* This section applies to any applicant who submits to FDA a new drug application or an amendment to it under section 505(b) of the act and § 314.50 or a supplement to an approved application under § 314.70, except as provided in paragraph (d)(2) of this section.

(b) *Patents for which information must be submitted and patents for which information must not be submitted—*(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the required information on the declaration form set forth in paragraph (c) of this section for each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (active ingredient) patents, drug product (formulation and composition) patents, and method-of-use patents. For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application. For patents that claim a polymorph that is the same as the active ingredient described in the approved or